IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Misc.No.34428-M of 2005

Date of Decision: November 1, 2006

Kehar Singh

...Petitioner

VERSUS

Kashmira Singh

...Respondent

PRESENT: Mr.K.G.Chaudhary, Advocate,
for the petitioner.

None for the respondent.

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RANJIT SINGH, J.

Petitioner seeks quashing of the complaint dated 18.8.1990 and the summoning order dated 29.3.1994 mainly on grounds of delay and the double jeopardy etc.

The facts of the case are that FIR No.219 dated 27.7.1990 was registered against the petitioner under Sections 324/148/149 IPC at the instance of respondent Kashmira Singh. After investigation, the trial of the petitioner followed for offences under Sections 323/324/148/149 IPC. All the accused persons including the petitioner were acquitted on 28.10.2003 of all the said charges. Copy of the judgment in this regard has been annexed as Annexure P-1 with the petition. A cross-case had also been registered against complainant Kashmira Singh in respect of the same very incident, which also ended in acquittal of the complainant. Kashmira Singh complainant, however, had also filed a complaint on 18.8.1990 for the same incident and on

29.3.1994 the accused persons including the present petitioner were summoned to face trial under Sections 325/324/323/452/435/427/148 and 149 IPC. The grouse of the petitioner is that though he has been summoned since 29.3.1994, yet the complainant has not produced any evidence in the case for the last eleven years till the petitioner filed the present quashing petition in July, 2005. It is stated that the complainant has been seeking adjournment after adjournment may be running into hundred, but has not produced any evidence. It is thus claimed that the present proceedings have not only been inordinately delayed, which is clearly attributable to the conduct of the complainant, but has resulted in un-called for harassment and miseries to the petitioner, who is facing these proceedings from the year 1990 onwards. This fact is required to be seen and appreciated in the light of the background that the petitioner, on the basis of same very allegations and incident, faced a valid trial and had earned acquittal, but still is being made to face these proceedings from the last about fifteen years till the time of filing of the present petition.

Notice of motion in this case was issued on 7.7.2005 and service is complete. Despite taking opportunities, no reply has been filed. In this background, the case was taken up for hearing on 1.11.2006. Noticing the absence of representation from the respondent despite service and the fact that no reply has been filed, the case has been heard on merits and is being decided without providing any further opportunity to the respondents.

Mr.K.G.Chaudhary, the counsel for the petitioner, mainly contended that delay on the part of the respondent to lead/conclude his evidence, when viewed in the background that petitioner had earlier been acquitted in the FIR case, the continuation of the present proceedings

arising out of this criminal complaint would be nothing but an abuse of process of the Court. It has been averred in the petition that this complaint was filed on 18.8.1990 and the petitioner alongwith others was summoned on 29.3.1994. It is noticed that the case was adjourned number of times, but still the complainant was not able to produce any evidence in the case for over eleven years. No denial is forth coming to this factual position. This fact is even otherwise clear from the record and can not be denied. Similarly the fact that the petitioner was earlier tried and was acquitted for the same very allegations can also not be seriously disputed in view of the documents on record. It is, thus, to be seen whether the present proceedings on the basis of a complaint can be allowed to be continued or further continuation thereof would amount to abuse of process of the Court.

Though not specifically pleaded in the petition but Section 300 Cr.P.C. may also come to the rescue of the petitioner in this case. This section provides that person once convicted or acquitted is not to be tried for the same offence. This Section recognises a basic fundamental principle that a man is not to be prosecuted twice for the same crime. The governing principles in this regard are that a man cannot be tried for a crime in respect of which he has previously been acquitted or convicted. For the applicability of this principle known as “Rule of autrefois acquit”, three essential conditions are required to be satisfied, as held by the Supreme Court in Mahmood Vs. State of Uttar Pradesh, AIR 1976 Supreme Court 69. These are (i) there must have been a trial of the accused for the offence charged against him; (ii) the trial must have by a Court of competent jurisdiction and (iii) there must have been a judgement or order of acquittal. When these three conditions are satisfied, subsequent trial of accused can

successfully be resisted by him on the plea of `autrefois acquit'. This Section is comparable to Clause (2) of Article 20 of the Constitution of India, which also provides that no person shall be prosecuted and punished for the same offence more than once. Both the provisions enact the well known principle of criminal jurisprudence that no one should be put in jeopardy twice for the same offence. Section 300 has been considered and found wider in scope than Article 20(2) of the Constitution of India inasmuch as the identity of the prosecutor in previous trial is not required to be the same as that in the subsequent prosecution. The principle underlying this Section does not rest only on any doctrine of estoppel but on a `public policy'. This rule also applies even if the previous case was instituted by a police challan and the second one by a private complaint and hence, the complainant may not have been party to the previous decision. It has also been held that even though the plea of autrefois acquit may not be strictly available to the accused in a particular case, he may still be entitled to invoke the inherent powers of the Court under Section 482 Cr.P.C. for quashing the subsequent trial, which is an abuse of the process of Court. In this regard, reference can be made to Gulab Chand Sharma Vs. H.P.Sharma, Commissioner of Income-tax, Delhi, 1975 Tax. L.R. 17. It is, thus, clear that where person has earned an acquittal after a proper trial and he is sought to be prosecuted again for the same offence, even though on a private complaint, Section 300 Cr.P.C. would stand to protect him.

The petitioner had earlier faced trial for an offence under Sections 323/324/148/149 IPC and now in addition to those he has been summoned for offences under Sections 325/452/435/427/148 and 149 IPC. It is seen that the entire incident on account of which the FIR and the

complaint has been filed is the same. Accordingly, the provisions of Section 300 Cr.P.C. noted above would get attracted in the present case.

The conceded position in this case is that incident of the year 1990 is being dragged on at the behest of the complainant from the last sixteen years. Delay in this case, which is clearly attributed to the conduct of the complainant in itself is enough to end the further ordeal of the petitioner. Making the petitioner to face this prolonged and protracted proceedings that too after his acquittal in the FIR case has clearly resulted in violation of the fundamental right of life and liberty of the petitioner as guaranteed under Article 21 of the Constitution of India. Not only this, the petitioner is being vexed with these proceedings once over again, though he was able to earn his acquittal in the criminal case arising out of the FIR. The principle of doctrine of jeopardy and the one laid down in this regard under Section 300 Cr.P.C. would also certainly come to the rescue of the petitioner. It is clear that the petitioner has suffered enough and his sufferings must now come to an end. The present proceedings against the petitioners are nothing but an abuse of the process of the Court and as such may not be allowed to continue any further.

Accordingly, the complaint dated 18.8.1990 and the proceedings arising out of the complaint and pending before the Court of Judicial Magistrate Ist Class, Ludhiana are hereby quashed.

The petition is accordingly allowed.

November 1, 2006 (RANJIT SINGH)
ramesh JUDGE